

EX PARTE OR DATE FILED

Nextel Communications, Inc.

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NEXTEL

EX PARTE OR DATE FILED

October 30, 1998

Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

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OCT 30 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

EX PARTE

Re: CC Docket No. 94-102

Dear Mr. Caton:

On behalf of Nextel Communications, Inc. ("Nextel") and pursuant to Section 1.1206 of the Federal Communications Commission's Rules, this letter constitutes notice that Lawrence R. Krevor, Bob Montgomery and Laura Holloway met yesterday with John Cimko, Chief of the Policy Division of the Wireless Telecommunications Bureau; Nancy Boocker, Deputy Chief of the Policy Division; Dan Grosh of the Policy Division; Won Kim of the Policy Division; and Bob Callas, Legal Assistant to the Chief of the Wireless Telecommunications Bureau, regarding Nextel's continued implementation of Enhanced 911 services throughout portions of the United States. Additionally, Nextel discussed its internal efforts to comply with the Commission's mandate to provide E911 access to hearing-impaired subscribers.

An original and one copy of this letter and the attachments, which Nextel provided at the meeting, have been filed with the Secretary pursuant to Section 1.1206. Should any questions arise in connection with this notification, please do not hesitate to contact the undersigned.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.


Laura L. Holloway
General Attorney

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Attachments

cc: John Cimko
Nancy Boocker
Won Kim

Dan Grosh
Bob Callas

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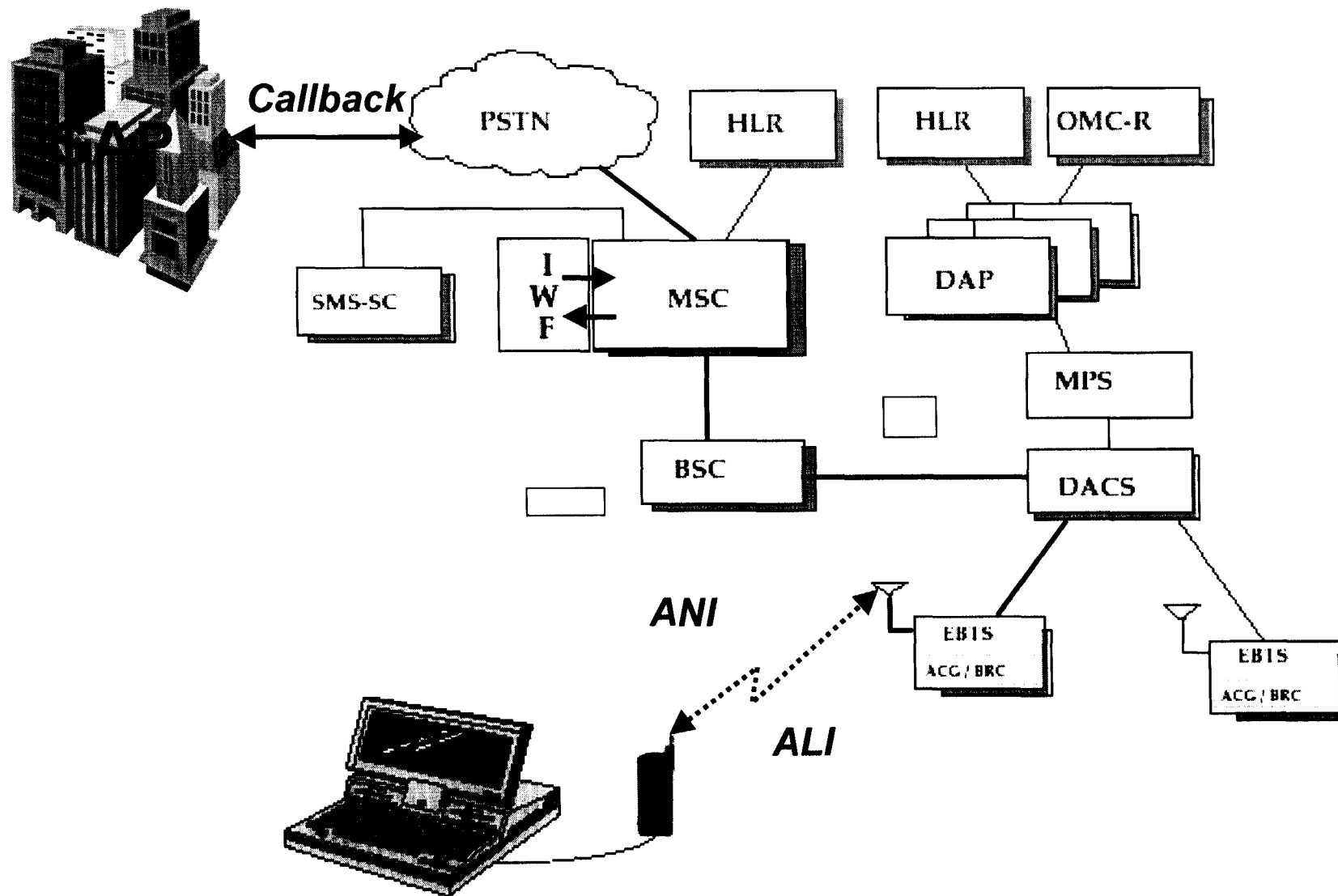
OCT 30 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

E911

October 28, 1998

E911/TTY Overview



NEXTEL

E911/TTY

- ▲i1000a iDEN Circuit Data Phone**
- ▲Laptop Computer**
- ▲TTY software - Pro Comm Plus or Gallaudet**
- ▲Circuit Data Cable -RS232**

E911 Rollout Issues

- ▲ Virginia State Police & local PSAPs will not accept 911 until Nextel supports #77**
- ▲ PSAPs in VA, IL and other localities refuse to accept wireless 911 calls**
- ▲ St Clair County, IL refused basic 911 calls until Nextel paid for service**
- ▲ Monroe County, NY filed an injunction to stop Nextel from sending 911 traffic NY State Police**

E911 Rollout Issues

- ▲ State of Washington requires carriers to provide ANI at no charge**
- ▲ New Jersey will pay only for trunk costs to their Selective Routers**

E911/TTY Compatibility Issues

▲Hearing Aids

- ◆ **i1000 iDEN Phone is our first model having a dynamic transducer capable of magnetic coupling to the T-coil in hearing aids which helps reduce the interference**

**Wireless E9-1-1
Cost Recovery & Funding**

Nextel

A STATE-BY-STATE SUMMARY

July 2, 1998

Wireless Cost Recovery

MANDATED

States With Cost Recovery for Phase I and II

Alabama, Arkansas, Colorado, Georgia, Indiana, Kentucky, Mississippi, Missouri, New Hampshire, South Carolina, Tennessee, Virginia.

PERMITTED

States With Wireless Revenue Source

Arizona, California, Connecticut, Louisiana, Maine, Maryland, Minnesota, Montana, Nevada (Washoe County), New York, Oregon, Rhode Island, South Dakota, Texas, Utah, Washington, West Virginia.

States Without Wireless Revenue Source

Alaska, Florida, Hawaii, Idaho, Illinois, Iowa, Kansas, Massachusetts, Michigan, Nebraska, Nevada (except Washoe County), New Jersey, New Mexico, North Carolina, North Dakota, Oklahoma, Pennsylvania, Vermont, Wisconsin, Wyoming.

NOT PERMITTED

Delaware, Ohio

MANDATED Only 12 states have passed legislation specifically requiring that money collected for 9-1-1 be spent to fund Phase I or II compliance. **PERMITTED** Another 17 states collect a wireless 9-1-1 fee, but do not require that those revenues be used for acquiring or maintaining enhanced wireless capabilities. They are listed in the Permitted category because state laws would permit 9-1-1 funds to be used for Phase I or II cost recovery. Similarly, 20 states that derive their 9-1-1 funds from wireline sources exclusively are in the Permitted category because those funds could be also be used for Phase I or II cost recovery. **NOT PERMITTED** There are two states whose laws do not appear to permit their 9-1-1 revenues to be spent (either in whole or in part) for the purpose of enhanced wireless cost recovery.

*Nevada is counted twice because of two different approaches to funding that coexist within the state.

Alabama

Wireless Funding Mechanism: YES

On April 16, 1998, Alabama enacted a new law to establish and fund a wireless E9-1-1 system. The law imposes a CMRS service charge of \$0.70 per month per CMRS connection, and will have a uniform application throughout the state. The funds collected under this Act are to be deposited into a CMRS Fund, and will be distributed as follows (less the costs of administration of the fund):

- 56% shall be distributed to the emergency communications districts and may be used exclusively for lease, purchase, or maintenance of wireless E9-1-1 equipment, including the necessary hardware, software, and database provisioning, and for expenses directly related to the implementation of the requirements of FCC Docket No. 94-102.
- 44% shall be deposited into a separate account for each emergency communication district and shall be used solely for the purpose of payment of the actual costs incurred by CMRS providers in complying with the wireless E9-1-1 service requirements established by FCC Docket No. 94-102. To receive payment, the CMRS service provider must submit a sworn invoice, which must then be approved by a majority vote of the CMRS board.

Indirect Funding Mechanism: YES

Alabama statutes provide for funding of E9-1-1 systems by the imposition of a surcharge on wireline services in the district. The "district" is a communications district established by statute and controlled by a board of commissioners. The board may impose an emergency telephone service charge not to exceed 5% of the maximum tariff rate charged by a service supplier in the district. If the district population is less than 25,000, the service charge would be an amount not to exceed \$2.00 per month per access line. Voter approval is a pre-requisite, however, for any imposition of a service charge by the board of commissioners.

Funds raised by the service charge must be used "to establish, operate, maintain, and replace an emergency communications system...." The language is broad enough to permit the use of those funds to implement Phase I and Phase II of FCC Order No. 94-102.

Since 1992, the board of commissioners of any district in which voters have approved the service charge may implement any rate authorized by the statute without further authorization. Thus, if funding wireless E9-1-1 solutions required additional service charges (beyond those now provided under the new law), the board could act to increase the wireline service charge (up to the maximum allowed by statute) on its own initiative.

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Wireless Carrier Limitation of Liability: YES

Except in the case of willful or wanton misconduct, the new law grants immunity to CMRS E9-1-1 service for any damages in a civil action or subject to criminal prosecution resulting from death, injury, or loss to persons or property incurred by any person in connection with establishing, developing, implementing, maintaining, operating, and otherwise providing wireless E9-1-1 service in compliance with the requirements established by FCC Docket No. 94-102.

Pending Legislation: NO

California

Wireless Funding Mechanism: YES

California does not make a distinction between wireless and wireline services in its approach to funding the state's E9-1-1 system. A uniform surcharge of .72% is applied to all intrastate telephone calls (both wireless and wireline) with the proceeds deposited into a single fund. The rate may be adjusted on an annual basis to a maximum allowable rate of .75%.

Wireless Carrier Limitation of Liability: YES

Immunity for 9-1-1 providers in California arises from the tariffs filed with the Public Utilities Commission. Wireless carriers, who do not as a rule file rate tariffs, enjoy limited protection from liability under tariff "terms & conditions." As wireless tariffs are phased out, however, carriers will lose protection. Wireless carriers do not presently enjoy any immunity for providing Phase I and II service.

Pending Legislation: YES

AB 909 has been introduced and if enacted will grant CMRS providers, employees, and agents immunity from civil liability except for willful or wanton misconduct, gross negligence, or acts or omissions intended to cause damage or injury. Immunity for the release of subscriber information in handling a 9-1-1 call is not included in the bill. Also included in the bill is a provision permitting the routing of calls to PSAPs instead of to the California Highway Patrol. This bill was originally proposed as AB 2596, but stalled for unrelated reasons. The chief sponsor, Rep. Thomson, then moved the portions of the bill relating to wireless 9-1-1 to AB 909.

If enacted, this bill will take effect on January 1, 1999.

Colorado

Wireless Funding Mechanism: YES

Colorado authorizes its counties, cities, and special districts to fund local 9-1-1 systems by means of an access line surcharge not to exceed \$0.70 per month. The charge is to be applied equally as to wireline and wireless subscribers served by the governmental body. In the event that the \$0.70 per line is insufficient to fund the needs of the system, higher charges may be imposed with the approval of the Public Utility Commission.

The statutes specifically provide for the use of funds to include wireless ALI and ANI services. In fact, CRS29-11-104 (4) states that wireless carriers are to be fully reimbursed for all costs incurred in making any equipment changes necessary for the provision of such services.

Wireless Carrier Limitation of Liability: YES

Present law provides for immunity to all carriers, whether wireless or wireline, except in cases of intentional misconduct or gross negligence.

Pending Legislation: NO

Connecticut

Wireless Funding Mechanism: YES

Connecticut currently imposes a \$0.40 surcharge per month per access line. This fee is applicable to both wireline and wireless subscribers equally. Connecticut permits a reduction in access line fees for subscribers with more than one line.

The amount of the fee is subject to annual adjustment.

All funds raised by the surcharge are deposited in the Enhanced 9-1-1 Telecommunications Fund. There is no requirement that wireless revenues be used for wireless expenditures. Both wireline and wireless revenues are commingled in the fund, and the fund may be used solely to pay the expenses, as determined by the Commissioner of Public Safety, associated with the enhanced 9-1-1 system.

Wireless Carrier Limitation of Liability: YES

No carrier or agent is liable to any person who uses the enhanced 9-1-1 service for release of information specified in the statute, or for *"any failure of equipment or procedure in connection with enhanced 9-1-1 service."* This provision previously applied solely to telephone companies, and was extended to include CMRS providers in accordance with PA 96-150.

Pending Legislation: NO

Delaware

Wireless Funding Mechanism: NO

Indirect Funding Mechanism: NO

Delaware funds 9-1-1 services by authorizing counties to impose a local wireline surcharge not to exceed \$0.50 per month per access line. The proceeds of this surcharge are placed in a separate fund and used solely to reimburse costs associated with *the "administration, staffing, street addressing, and training necessary to support a system on a monthly basis."*

The language of the Delaware statutes does not appear to permit expenditures from the fund for nonrecurring expenses.

Wireless Carrier Limitation of Liability: YES

Delaware does not distinguish between providers of 9-1-1 services in matters relating to liability. All providers are included under § 10005, which states that liability shall not exceed \$1,000,000 for acts relating to the provision of 9-1-1 services, and no liability shall arise when the acts of a third party are involved.

Pending Legislation: YES

House Joint Resolution 15 was introduced on 6/25/97 and is currently out of committee. This resolution proposes to appoint a task force to evaluate the staffing needs, monetary support, training, equipment and technology for non-emergency calls and related matters relevant to each of the three county 9-1-1 centers in the state. No action has been taken on this resolution in several months, but technically it remains pending.

Florida

Wireless Funding Mechanism: NO

Indirect Funding Mechanism: YES

The Florida Emergency Telephone Act does not specifically address the issue of wireless telephony, but does provide indirectly for a funding mechanism applicable to enhanced wireless 9-1-1 services. The Act authorizes county boards of commissioners to impose a 9-1-1 fee, either upon a majority vote of the commissioners, or upon approval by referendum of a majority of the voters. The fee, to be paid by wireline subscribers, may not exceed \$0.50 per month per access line. Funds must be spent exclusively for 9-1-1 purposes as specified in the statute, and those purposes would encompass implementation of wireless solutions for call identification and location.

Wireless Carrier Limitation of Liability: YES

Florida law had provided for immunity to wireline carriers based upon specific language, which could not be stretched to include wireless carriers. That protection has now been extended to include CMRS providers by virtue of passage of HB 4143 on April 28, 1998.

Pending Legislation: NO

Legislation had been in the process of being drafted for introduction during the current session of the Legislature. That bill would likely have authorized a statewide surcharge \$0.50 per month per wireless subscriber. In addition, wireless carriers would have acquired the same indemnity and limitations of liability protection currently provided to wireline carriers under the Florida Emergency Telephone Act.

The legislative picture is complicated, however, by an unwillingness of the House to entertain any new tax measures during the current session. Despite the public safety aspects of 9-1-1 legislation, there remains in Florida a strong aversion to new taxes, regardless of the purpose.

Perhaps in recognition of the present political climate, and in lieu of the original legislative effort of the wireless industry and public safety community, House Bill 4143 was introduced and was passed unanimously on April 28, 1998. HB 4143 focused only on the issue of limitations on liability for wireless providers. The bill amends the statute by granting CMRS providers the same protections against liability enjoyed by exchange carriers. Under the new law, a CMRS provider is not liable for damages resulting from the provision of 9-1-1 service except in the instance of a wanton and willful disregard for human rights, safety, or property, or unless the action causing harm results from a malicious purpose.

HB 4143 was presented to the governor on May 12 and became effective immediately upon his signature on May 28.

Georgia

Wireless Funding Mechanism: YES

Governor Miller signed SB 572 into law as Act 881 on April 20, 1998. Effective July 1, 1998, local governing bodies in Georgia will be authorized to impose a wireless E9-1-1 fee not exceed \$1.00 per access line, or the amount charged to wirelines, whichever is lower. In jurisdictions that have had 9-1-1 service since March of 1988, passage of an ordinance or resolution will by itself be sufficient to impose the fee. Otherwise, the fee may be implemented only after a public hearing, or upon the affirmative vote of the electorate.

The Act amends the previous definition of "service supplier" to include wireless carriers and specifically addresses wireless enhanced 9-1-1 service. Its primary focus is the implementation, upgrading, and maintaining of a "911" system which is capable of receiving and utilizing the following information, as it relates to '911' calls made from a wireless telecommunications connection: automatic number identification, the location of the base station or cell site which receives the '911' call, and the location of the wireless telecommunications connection."

Revenues collected by both wireline and wireless fees are deposited in a restricted account called the Emergency Telephone System Fund, which is maintained by the local governments. However, prior to July 1, 2002, 30% of the funds collected by the wireless charge will be deposited into a separate reserve account (within the Emergency Telephone System Fund) known as the Wireless Phase I Reserve Account. The moneys in this account will be used exclusively to pay for recurring and non-recurring costs associated with providing ANI and location of the base station or cell site from which the call originated (i.e. compliance with Phase I of FCC Order 94-102).

After July 1, 2002, 15% of the funds collected by the wireless charges will be deposited into this reserve account. If, after October 1, 2002, the local government has in place wireless 9-1-1 service capable of ANI and location of the base station, that government may impose an additional wireless charge. Thirty cents of this charge shall be deposited into another reserve account known as the Wireless Phase II Reserve Account, which shall be used exclusively for recurring and non-recurring costs associated with ANI and ALI for wireless connections. If funds remain in the Phase I account, they are to be transferred to the Phase II account.

Wireless Carrier Limitation of Liability: YES

In Georgia, a "service supplier," which now includes a wireless carrier, is not liable for any damages in a civil action for "injuries, death, or loss to persons or property incurred by any person as a result of any act or omission of a

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service supplier or any of its employees, directors, officers, or agents, except for willful or wanton misconduct, either in connection with developing, adopting implementing, maintaining, or operating any emergency 911" system or in the identification of the telephone number, address, or name associated with any person accessing an emergency "911" system."

Pending Legislation: NO

Illinois

Wireless Funding Mechanism: NO

Indirect Funding Mechanism: YES

Illinois funds its 9-1-1 system by authorizing the local governing bodies to impose a wireline surcharge. The amount is not specified in the statute, although the surcharge may not exceed \$1.25 per month per access line in municipalities whose populations exceed 500,000. The amount of the surcharge is to be specified in the enabling ordinance and must be approved by the voters prior to its imposition. Voter approval is not required, however, where the population is greater than 500,000.

The proceeds of this surcharge are to be paid to a separate fund and to be used for necessary improvements, implementation and upgrades of the 9-1-1 system. The language of the statutes is broad enough to permit the expenditure of funds for those wireless enhancements mandated by Phase I and Phase II requirements set forth in FCC Docket No. 94-102.

Wireless Carrier Limitation of Liability: NO

Pending Legislation: YES

Representative Cross introduced House Bill 646 during the 1998 term. However, Rep. Cross filed a motion of non-concurrence, effectively killing the bill. While it is possible the bill may be passed during the November veto session, it is most likely that the bill will be reintroduced with a new bill number next year or that new legislation will be drafted.

Indiana

Wireless Funding Mechanism: YES

On March 13, 1998, Indiana passed, and the Governor signed into law, SB 150. This new law creates a wireless funding mechanism for E911 services and attempts to bring Indiana into compliance with FCC Docket # 94-102. The law defines CMRS providers and subscribers, and is quite sophisticated in its application of wireless-specific 911 technology, including pseudo-ANI and other terms. The new law establishes an 11 member CMRS 911 board, which is charged with the tasks of collecting, auditing, and disbursing funds to 911 districts and CMRS providers for the provision of 911 services.

The new law authorizes a surcharge to fund CMRS 911 service. The law establishes an immediate surcharge of \$0.65 against a maximum rate of \$1.00 per month per wireless access line. Of the moneys collected, a CMRS provider may retain up to 2% for administrative costs associated with the collection of the fee. The remaining moneys are to be distributed as follows: (1) At least \$0.03 must be held in an interest bearing escrow account to be used for implementation of Phase II of the FCC Order. (2) At least \$0.25 of the fee must be held in an escrow account and used to reimburse CMRS providers for the actual costs associated with complying with the wireless 911 requirements of the FCC Order. Costs that may be reimbursed include design, upgrade, purchase, lease, installation, maintenance and testing of all necessary data, hardware, or software, as well as operating costs, and other associated costs. (3) Up to 2% of the collected fees may be used to pay costs associated with the operation of the board. (4) The remaining moneys are to be distributed to PSAPs that provide wireless 911 service, so long as they have provided notice of this service to the board.

Under the new law, a CMRS provider may be reimbursed for all costs associated with providing wireless enhanced 911 service and the requirements set forth in FCC Docket 94-102.

The law takes effect on May 10, 1998.

Indirect Funding Mechanism: YES

Although no longer necessary as a result of the enactment of SB 150, indirect funding in Indiana is available. Indiana funds its E9-1-1 systems on a county-by-county basis with a monthly enhanced emergency telephone system fee. The fee is actually assessed against users of "exchange access facilities" in an amount not to exceed from 3% to 10% of the average monthly telephone access line charge. (The maximum rate applied depends upon the absence or presence of either a consolidated city or a second class city within the

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boundaries of the county.) Oddly enough, the Code defines exchange access facility to include a mobile telephone system access trunk, whether the trunk is provided by a telephone company or a radio common carrier. Thus, a direct funding mechanism appears to have been provided for wireless services, although legal experts seem split on this issue. Passage of SB 150 renders the issue moot, however.

Funds raised by the system fee must be used solely for the purposes stated in the code, which includes the *"lease, purchase, or maintenance of enhanced emergency telephone equipment, including necessary computer hardware, software, and database provisioning."* Also included are the *"rates associated with the service suppliers' enhanced emergency telephone system network services."* These provisions appear broad enough to encompass expenditures needed to satisfy the requirements of Phase I and Phase II compliance under FCC Order No. 94-102.

Wireless Carrier Limitation of Liability: YES

Enactment of SB 150 has extended immunity to wireless carriers except for willful or wanton misconduct. Indiana Code 36-8-16-18 provides protection from liability to a "service supplier" as well as to a telephone company. Under the definitions now added to the Code, CMRS providers are specifically included.

Pending Legislation: NO

Kentucky

Wireless Funding Mechanism: YES

Enactment of HB 673 on April 13, 1998 results in a statewide wireless surcharge of \$0.70 per wireless access line. Effective July 15, 1998, a newly created emergency telephone fund will be administered by an eight-member board. The fund will be distributed so that 50% will go to PSAPs for upgrading equipment, and for operating costs associated with providing CMRS E9-1-1 service. The remaining 50% will go to the CMRS providers to upgrade their systems and to operate enhanced wireless 9-1-1 features.

Wireless Carrier Limitation of Liability: YES

CMRS providers are immune from civil liability for damages associated with the provision of 9-1-1 service, except in cases of willful or wanton misconduct or bad faith.

Pending Legislation: NO

Louisiana

Wireless Funding Mechanism: YES

E9-1-1 funding in Louisiana is determined at the parish level, and at least 25 parishes thus far have passed enabling legislation. State law limits fees to a maximum of \$1.00 per month per access line for wireless residential service and \$2.00 per month per access line for wireless business service. Current rates, where enacted, range from \$0.43 to \$1.25.

Indirect Funding Mechanism. YES

Louisiana also funds 9-1-1 services by authorizing parishes to impose a wireline surcharge with the same restrictions as apply to wireless surcharges. The proceeds from BOTH surcharges are placed in a single fund used solely to pay costs associated with providing 9-1-1 services.

The language of the Louisiana statutes is broad enough to permit expenditures from this common fund for wireless enhancements in compliance with Phase I and Phase II requirements set forth in FCC Docket No. 94-102

Wireless Carrier Limitation of Liability: YES

Liability protection is provided for in tariff agreements between the wireless carriers and the Public Utility Commission. Only PCS carriers are left without clear protection, since they do not file tariff agreements.

Pending Legislation: NO

Maryland

Wireless Funding Mechanism: Yes

The Maryland statute authorizes a two-tiered fee structure for E9-1-1 services. First, there is a statewide 9-1-1 fee in the amount of \$0.10 per communication line. Secondly, each county may impose an additional surcharge of up to \$0.50 per line. Wireless communications lines are specified in the statute and are subject to these fees.

Under the statute, the funds generated by these fees are deposited into a separate 9-1-1 Trust Account. No distinction is made between wireless and wireline funds, and both are deposited into the trust. A 13 member 9-1-1 board is responsible for the administration of the trust. The members of the 9-1-1 board include one representative of the telephone companies and one representative of wireless carriers. The board is responsible for reimbursing the counties for costs associated with providing, enhancing, upgrading, or maintaining their 9-1-1 systems.

The funds in the 9-1-1 Trust Account may be used solely for installation, enhancement, maintenance and operation of a county or multi-county 9-1-1 system. Although no specific mention is made of FCC Docket No. 94-102, the language of the statute is clearly broad enough to encompass compliance with the Order.

Wireless Carrier Limitation of Liability: Yes

The Maryland statute extends to wireless providers the same immunity from liability for transmission failures as that approved by the Public Service Commission for wireline carriers.

Pending Legislation: No

Massachusetts

Wireless Funding Mechanism: NO

Indirect Funding Mechanism: YES

Massachusetts is unique in funding its E9-1-1 system by means of a surcharge against the cost of directory assistance calls. Wireline carriers impose a monthly charge for all directory assistance calls. (The first 10 calls are free.) The rate is set forth in tariff schedules filed with the Massachusetts Public Utility Commission

Wireless Carrier Limitation of Liability: NO

Wireline carriers are protected by the terms and conditions of their tariff filings. Wireless carriers have no statutory or regulatory protection.

Pending Legislation: YES

Senator Marc Pacheco has introduced Docket No. 2175, An Act Establishing Wireless Enhanced 911 Services. The bill recognizes the need to upgrade the existing E9-1-1 system in order that PSAPs be capable of receiving and processing wireless E9-1-1 calls. Specific reference is made to the Phase I and Phase II requirements of FCC Docket No. 94-102, and the measure would seek to ensure that FCC conditions, with particular emphasis on the cost recovery mechanism, be met as quickly as possible.

Sen. Pacheco's bill incorporates the following key provisions:

- "Enhanced 911 service" is redefined in the statute to include wireless communications.
- "Wireless carrier" is added to the definitions listed in the statute. It is defined as *"a carrier required by the Federal Communications Commission to provide enhanced 911 service...."*
- "Wireless enhanced 911 service provider" is added to the definitions listed in the statute. It is defined as *"any wireless carrier or agent thereof, or reseller, or any person that provides equipment or services for the establishment, maintenance, or operation of wireless enhanced 911 services."* SCC would therefore be considered such a provider, and as such would be directly protected from liability. (See below.)
- A surcharge in the amount of \$0.30 per month per wireless telephone number billed within the state would be instituted immediately. The statewide emergency telecommunications board (the "Board") would be authorized to increase that fee to a maximum of \$0.75 if justified by actual expenditures incurred in implementing the wireless E9-1-1 system.

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- The Wireless Enhanced 911 Fund would be created as the sole repository of the surcharge revenues and as the source of all funds used to reimburse wireless carriers and/or wireless enhanced 911 service providers.
- The Board will make disbursements from the Fund against invoices submitted by the service providers *"for expenses for network facilities, including equipment, installation, maintenance, and associated implementation and administrative costs..."*
- Reimbursement will be made to carriers and/or service providers *"for rates or recurring costs associated with any service, operation, administration or maintenance of wireless enhanced 911 service"* and of other costs *"associated with providing wireless enhanced 911 service, including the cost of design, development and implementation of equipment or software necessary to provide wireless enhanced 911 service information to public safety answering points."*
- The Board is also authorized to disburse funds for the benefit of PSAPs in order to ensure that they are capable of receiving wireless 9-1-1 service information. Qualifying expenditures would include equipment, necessary computer software, hardware and database provisioning, network development, operation and maintenance, on premise equipment maintenance, wireless personnel costs, and wireless training.
- Immunity would be granted to E9-1-1 providers from liability for civil damages except *"to the extent due directly to its willful misconduct or gross negligence"*. Providers would also be shielded from liability for the release of subscriber information.

The Act will take effect two months after its passage and expire 5 years thereafter.

Minnesota

Wireless Funding Mechanism: YES

Minnesota statutes provide for imposition of both a basic as well as an enhanced 9-1-1 fee, which is applied equally to wireline and wireless access line accounts. The precise amount of the fees is set by the Commissioner of Administration within a maximum allowable range of from \$0.08 and \$0.30 per access line per month.

The inclusion of wireless surcharges for E9-1-1 is specifically required pursuant to MS 403.113.

Wireless Carrier Limitation of Liability: YES

Minnesota Statutes 403.14, enacted in 1997, extended the same liability protection to wireless providers of E9-1-1 services as was previously enjoyed by wireline providers. The protection shields carriers from civil liability except in cases of willful or wanton misconduct. The statute also provides for immunity with respect to confidential customer information required to be provided to the PSAP.

Pending Legislation: NO

Missouri

Cost Recovery Mandate: YES

Passage of Senate Bill 743 will create a Wireless Service Provider Enhanced 911 Service Fund. Upon voter approval, a fee not to exceed \$0.75 per month per wireless telephone number, will be collected from wireless customers and deposited in the fund. The office of administration would be authorized to administer the fund and to distribute the moneys for approved expenditures as follows:

- (1) for the "reimbursement of actual expenditures for implementation of wireless enhanced 911 service by wireless service providers in implementing Federal Communications order 94-102;" and
- (2) to subsidize and assist the PSAPs based upon a formula including the volume of wireless calls, the population of the PSAP jurisdiction, the number of wireless telephones in the PSAP jurisdiction, and any other criteria found to be valid by the office of administration. At least 10% of the funds allocated to PSAPs must be divided equally between participating PSAPs.

SB743 allows wireless providers to retain only 1% of the fees collected to cover costs of billing and collection.

Signed into law by the Governor on July 2, 1998, SB 743 became immediately effective, and voter approval of the fee will be sought in the next general election to be held in November of 1998. If approved, the fee will be effective on January 1, 1999.

Indirect Funding Mechanism: YES

Missouri Revised Statutes Section 190.305 authorizes cities and counties to provide emergency telephone service, and to pay for it by levying an emergency telephone tax. The governing body is authorized to levy the tax in an amount not to exceed 15% of the tariff local service rate, or \$0.75 per access line per month, whichever is greater.

In lieu of the emergency telephone tax, the county commission of any county may, upon approval of the electorate, impose a countywide sales tax not to exceed 1% on the receipts of retail sales of tangible property and taxable services. If this approach is selected, the county will be required to establish a board to administer the funds and to oversee the provision of emergency services in the county.

Funds raised under Section 190.305 shall be used exclusively to pay for the operation of emergency telephone service, which could include compliance with Phase I and Phase II requirements of FCC Docket No. 94-102. Funds raised by the county sales tax, while applicable to wireless enhancement of 9-1-1, are also applicable to the operational costs of *other emergency*

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services. Thus, the net funds available for wireless enhancements might be less under a sales tax plan rather than a tariff or access line plan.

Wireless Carrier Limitation of Liability: YES

Passage of SB743 provides for liability protection for wireless providers. The statutes as amended will provide that in no event *"shall any wireless service provider, its officers, employees, assigns or agents, be liable in any form of civil damages or criminal liability which directly or indirectly result from, or is caused by, an act or omission in the development, design, installation, operation, maintenance, performance or provision of 911 service or other emergency wireless two- and three-digit wireless numbers, unless said acts or omissions constitute gross negligence, recklessness or intentional misconduct."* The bill also extended immunity from liability to the mandated release of subscriber information *"unless the release constitutes gross negligence, recklessness or intentional misconduct."*

Missouri appears to be the first state prepared to explicitly extend liability protection to the provision of wireless emergency numbers other than 9-1-1.

Pending Legislation: NO

Nevada

Wireless Funding Mechanism: YES, in Washoe County

The provisions of NRS244A.7643 specifically authorize a county of less than 400,000 but more than 100,000 (to wit Washoe County), to impose by ordinance a surcharge not to exceed \$0.25 per month per access line (both wireline and wireless). Actually, the statute is written so that the surcharge is first determined for wireline access, and then the wireless surcharge must equal that amount. This statute expires on December 31, 1999.

Indirect Funding Mechanism: YES

In the case of Clark County, the statute requires that a taxing district be established if funding for the 9-1-1 system has been approved by the voters. In all other counties, the language is more permissive but essentially produces the same result. Thus, upon approval by the voters, Nevada counties are empowered to impose ad valorem taxes on all taxable property at a rate of \$0.005 per \$100 of assessed valuation. The funds generated by the tax must be used to establish a 9-1-1 system whose features may include ALI and ANI, and any other feature *"which enables the system to operate more efficiently and effectively."* This would permit the expenditure of funds for compliance with Phases I and II of FCC Order 94-102.

Wireless Carrier Limitation of Liability: NO

Pending Legislation: NO

New Jersey

Wireless Funding Mechanism: NO

Indirect Funding Mechanism: YES

New Jersey statutes direct both state and local government agencies to provide funding for 9-1-1 services. While it is unclear by what means funds are to be made available at the local level, how such funds may be spent is not in doubt. The language of the statute is broad enough to permit expenditures for wireless service enhancements made in compliance with Phases I and II of FCC Docket No. 94-102.

Wireless Carrier Limitation of Liability: YES

Under § 52:17C-10(b), no person shall be liable for the release of information regarding name, location or phone number, or for any failure of equipment or procedure in connection with the E9-1-1 service, or for any act committed in good faith in rendering such service.

Pending Legislation: NO

New Mexico

Wireless Funding Mechanism: NO

Indirect Funding Mechanism: YES

New Mexico law establishes two funds through which 9-1-1 services are funded. Under § 63-9D-8, an "enhanced 911 fund" is established, and a \$0.25 per line monthly wireline surcharge is authorized. This fund is to be used for the purchase, lease, installation or maintenance of equipment necessary for a 9-1-1 system. The second fund is named "network and database fund," and is funded by a \$0.26 per line monthly surcharge. This fund is to be used for operation and maintenance of the networks and databases necessary for the E9-1-1 service.

To obtain moneys from these funds, local governments submit vouchers to the state board of finances, which ultimately accepts or denies the charges. Although wireless 9-1-1 services are not specifically mentioned, the language of the statute is broad enough to permit expenditures made in compliance with Phase I and Phase II requirements set forth in FCC Docket No. 94-102.

Wireless Carrier Limitation of Liability: YES

Mobile telephone companies are specifically mentioned in § 63-9D-10, which grants immunity from liability for all acts which are not willful or wanton negligence or intentional acts, which occur in the performance of installing, maintaining, or providing E9-1-1 systems, and transmitting 9-1-1 calls.

Pending Legislation: NO

Ohio

Wireless Funding Mechanism: NO

Indirect Funding Mechanism: NO

Ohio code provides for cost recovery to wireline carriers for the recurring maintenance and operation of the telephone network components of the 9-1-1 system. This is accomplished via tariffs filed with the Public Utilities Commission. Nothing in the code, however, would permit extending cost recovery to wireless carriers. Furthermore, the funding of the state's 9-1-1 system is quite complex, and local voter approval is required at each step of the process of building and then maintaining the system.

Non-recurring costs would appear to qualify for funding derived solely from locally imposed real property taxes. While there is provision for a max \$0.50 per month fee per access line, those funds may only be used under special circumstances, and only after the approval of a majority of the electorate.

Wireless Carrier Limitation of Liability: Probably Not

The Ohio code does provide for immunity for telephone companies. The language at Section 4931.49 extends that protection to "any other installer, maintainer, or provider." However, other language suggests a very restricted interpretation.

Pending Legislation: YES

Draft legislation is expected to be submitted to the legislature for committee action. It includes an initial statewide wireless surcharge of \$0.65 per access line per month, with the proceeds being split evenly between the PSAPs and the wireless providers (48.5%/48.5%). The legislation is intended to provide for full cost recovery for wireless providers as well as PSAPs of the costs associated implementing FCC Docket No. 94-102. Wireless providers would be authorized to retain 2% of the fees for billing and collection.

Also included is a provision extending to wireless providers unqualified immunity from civil liability.

Pennsylvania

Wireless Funding Mechanism: NO

Indirect Funding Mechanism: YES

Pennsylvania statutes provide for wireline 9-1-1 fees (described in the statutes as "contributions") on a local basis, depending upon the classification of the county. Those contributions, which are fixed by the County Commissioners subject to public review, range from \$1.00 to \$1.50 per month per local exchange access line.

Funds raised by those access fees *"shall be utilized for payments of nonrecurring and recurring costs of a 911 system."* Thus, expenditures made in compliance with the Phase I and Phase II requirements set forth in FCC Docket No. 94-102 would be permitted.

Wireless Carrier Limitation of Liability: YES

Act 17 has incorporated immunity protection for wireless carriers into P.L. 340, No. 78. The new provision provides that no wireless communications company or vendor or agent, or employee or director of a wireless communications company or vendor, *"shall be liable to any person who uses the 911 emergency service established under this act...."* The only exception is in the case of willful or wanton misconduct.

Pending Legislation: NO

No wireless funding legislation is likely until January 1999.

It should be noted that Act 17 vests the Pennsylvania Emergency Management Agency (PEMA) with sweeping authority and oversight of planning and implementation of 9-1-1 systems by every county in the state. It is anticipated that rules, regulations, and guidelines arising from PEMA oversight will address the incorporation of wireless 9-1-1 enhancements by the counties.

Rhode Island

Wireless Funding Mechanism: YES

The 911 Emergency Telephone Act specifically authorizes and directs wireless providers to collect a monthly surcharge of \$0.47 per wireless telephone. There is no requirement, however, that funds raised from wireless users be applied exclusively to wireless elements of the E9-1-1 system.

Indirect Funding Mechanism: YES

The same 911 Emergency Telephone Act also mandates that wireline providers collect the same \$0.47 per access line per month from wireline customers. Since all funds from all sources are commingled in the E9-1-1 emergency fund, wireline funds would inevitably be included in any monies spent in compliance with Phase I and Phase II requirements set forth in FCC Docket No. 94-102.

Wireless Carrier Limitation of Liability: YES

In accordance with the E9-1-1 Uniform Emergency Telephone System Authority, local public service answering points, E9-1-1 service providers, including telephone common carriers and telecommunication services providers and their respective employees, directors, officers, representatives or agents shall not be liable to any person for civil damages resulting from or caused by any act or omission in the development, design, installation, operation, maintenance, performance or provision of E9-1-1 service, except to the extent due directly to its willful misconduct or gross negligence. Also, no provider of E9-1-1 service, including a telecommunication services provider shall be liable to any person who uses E9-1-1 service, for the release of subscriber information, including but not limited to, billing information required under this act, to any public safety answering point or to the state of Rhode Island or the E9-1-1 Uniform Emergency Telephone System Authority.

Pending Legislation: YES

SB 2838 Has been passed by the Rhode Island Legislature and awaits signature by the governor. The bill would expand the purposes for which moneys accumulated in the E9-1-1 fund may be used and provides that the funding surcharge shall be billed by each telecommunications services provider. The measure also changes the makeup of the E-911 Uniform Emergency Telephone System Division advisory commission by adding the administrator of the division of public utilities and carriers, and by eliminating the representative of New England telephone and telegraph company.

Tennessee

Wireless Funding Mechanism: YES

HB 3190 passed both houses of the Tennessee legislature and became law without the governor's signature. The new law amends 7-86-102 et seq. of the Tennessee Code, establishing an Emergency Communications Board. The Board will suggest a wireless surcharge to the legislature next year, which cannot exceed \$3.00. The board is also given the power to raise wireline surcharges in financially distressed areas to a maximum of \$1.50 for residential lines, and \$3.00 for business lines. Previously, this required a referendum in the area affected. Wireless surcharge funds would be deposited in a 911 Emergency Communications Fund to be disbursed primarily for implementing, maintaining, and enhancing wireless 9-1-1 service throughout the state. The wireless carriers would collect and remit the surcharge, retaining 3% as an administrative fee. This law will take effect July 1, 1998.

Indirect Funding Mechanism: YES

Tennessee has in place an Emergency Telephone Fund that does not make a distinction between wireline and wireless expenditures. Each county is authorized to impose a fee on wireline connections as a means of funding 9-1-1 systems, but the law does not restrict the spending of those funds to wireline solutions to 9-1-1 system needs. In two counties (Shelby and Knox) decisions were made to proceed with wireless enhancements in reliance on the existing statutes. This may stimulate litigation on the issue, and possibly stimulate action in the state legislature to enact a direct funding mechanism for wireless.

Wireless Carrier Limitation of Liability: YES

HB 3190 also grants immunity to wireless carriers in providing 9-1-1 service by stating that "A commercial mobile radio service provider shall not have any greater responsibility or duty to its customers or other persons with respect to 911 calls and the operation of a 911 system than does a non-commercial mobile radio service provider to its customers or other persons." This law will take effect July 1, 1998.

Pending Legislation: NO

Texas

Wireless Funding Mechanism: YES

Texas amended its laws last year to include wireless providers and to mandate a surcharge of \$0.35 per month on wireless access lines. The proceeds of this surcharge are placed in a general fund to pay for 9-1-1 related services.

Indirect Funding Mechanism: YES

Prior to enacting a wireless surcharge, Texas funded its 9-1-1 service with a \$0.50 user fee on wireline access. That fee remains in effect, and combined with the wireless surcharge, Texas has dramatically increased the money available for 9-1-1.

The funds are distributed by regional planning commissions or public agencies to the agency providing the 9-1-1 service. From the total of all funds available, Texas is free to make the wireless 9-1-1 enhancements required to comply with Phase I and Phase II of FCC Docket No. 94-102.

In addition, Texas has created a 911 Equalization Fund, which allows for a surcharge on intrastate long distance calls on land lines and is based on a percentage of the intrastate long distance phone bill. All moneys are placed in the general fund, which is allocated to communities as they carry out their regional 9-1-1 service plans.

Wireless Carrier Limitation of Liability: YES

Liability protection in Texas was extended last year to include wireless carriers in the provision of 9-1-1 services, except in cases of gross negligence, recklessness, or for intentional acts.

Pending Legislation: NO

Washington

Wireless Funding Mechanism: YES

Each county in Washington is authorized by RWC 82.14B.030 to impose a 9-1-1 excise tax not exceeding \$0.25 per radio access line. This is in addition to county and statewide excise taxes on wireline access.

Indirect Funding Mechanism: YES

All excise taxes, from whatever source, are designated for use by the counties for the emergency services communication system. Wireless contributions are not earmarked for enhanced wireless capabilities. Thus, compliance with Phases I and II of FCC Order 94-102 could be accomplished regardless of the wireless excise tax.

Enhanced 9-1-1 capabilities have been mandated and must be fully implemented statewide by December 31, 1998. The counties are required to fund the actual costs of implementation, or to provide an amount equal to the maximum revenues achievable at \$0.50 per wireline access line per month, whichever is less. This means that in order to meet the deadline requirements of E9-1-1 implementation, taxes contributed by wireless subscribers could be consumed in expenditures unrelated to compliance with FCC Order 94-102. (It should be noted, however, that since 1994 wireless carriers have been required by law to provide ANI.)

Wireless Carrier Limitation of Liability: YES

Telecommunications providers are immune from civil liability in Washington except for willful or wanton misconduct or acts or omissions constituting gross negligence. Database service providers are extended the same protections.

Pending Legislation: NO

Substitute House Bill 1126 was enacted April 3, 1998. That measure reversed the planned reduction in the maximum statewide tax on wireline access. The original maximum of \$0.20 per month per line has now been made permanent.